



THE UNIVERSITY *of*
NEW ORLEANS

INVITATION FOR BID

BID NAME AND NUMBER:

BRL2495

PROVISION OF VENDING SERVICES FOR SNACK MACHINES

BID OPENING TIME AND DATE:

June 13, 2022 AT 10:00 AM

BUYER:

Rachael Lindstrom

rlindstr@uno.edu

RETURN ALL BIDS TO THE FOLLOWING ADDRESS:

Purchasing Office

ADMINISTRATION ANNEX Building, Room 1004G

University of New Orleans

2000 Lakeshore Drive

New Orleans, Louisiana 70148

Phone: (504) 280-6172

Fax: (504) 280-6297

TABLE OF CONTENTS

3	General Instructions to Bidders
5	Standard Terms and Conditions
8	Special Terms and Conditions
9	Specifications
17	Bid Response Sheet
18	Appendix A/B – Vending Machine Locations/ Enrollment Summary
19	Appendix C/D – Gross Sales for Vended Snacks, Housing Occupancy
20	Appendix E – Insurance Requirements

GENERAL INSTRUCTIONS TO BIDDERS

1 Invitation to Bid

Bids for the following items and/or services specified are hereby solicited, and will be received by the Purchasing Office until the stated bid opening time and date and then publicly opened.

2 Authority to Sign

Bids must be signed by a person authorized to bind the vendor. In accordance with R. S. 39:1594(C)(4), the person signing the bid must be: 1) A current corporate officer, partnership member or other individual specifically authorized to submit bids as evidenced in appropriate records on file with the secretary of State; or 2) An individual authorized to bind the vendor, as evidenced by a corporate resolution, certificate, or affidavit; or 3) other documents indicating authority which are acceptable to the University.

3 Read Solicitation

Read the entire solicitation, including all terms, conditions, and specifications.

4 Corrections

All bids should be returned on the forms furnished and must be typed or written in ink. Any corrections or erasures must be initialed by the bidder.

5 Delivery of Bids

Bids may be submitted in person or by mail. The mailing address, fax number, and e-mail address are listed on the cover sheet. Bids delivered in person or by mail should be placed in a sealed envelope and marked with the bid name and number, the bid opening time and date, and the name and address of the bidder. The same information should be affixed to any additional materials sent as a part of the bid submission.

6 Bid Alterations

Alterations to bids will be accepted provided both the bid and alterations have been received in the Purchasing Office prior to bid opening time and date.

7 Late Bids

Late bids will not be accepted and will be returned unopened. Each bidder is solely responsible for the timely delivery of its bid. The University will not be responsible for any delay in the delivery of bids.

8 Delivery/Freight Charges

Bid prices will include all delivery/freight charges paid by the vendor, F.O.B., UNO, inside delivery, New Orleans, La, unless otherwise stated in the

specifications. Any invoiced delivery charges not quoted and itemized on the UNO purchase order are subject to rejection and non-payment.

9 Taxes

Vendor is responsible for including all applicable taxes in the bid price. The University of New Orleans is exempt from all Louisiana state and local sales and use taxes. By accepting an award, all firms acknowledge their responsibility for the payment of all taxes duly assessed by the State of Louisiana and its political subdivisions for which they are liable.

10 Payment

Assuming there is no prompt payment discount provision, payment (if applicable) will be made within thirty (30) days from receipt of products in satisfactory condition, or within thirty (30) days from date of invoice, whichever is later. Delinquent payment penalties are governed by L.R.S. 39:1695. Vendor penalties to the contrary shall be null and void, shall have no legal force, and shall not be recognized by the University in any dispute.

11 Acceptance

Only the issue of a purchase order or a signed acceptance of a proposal constitutes acceptance on the part of the University.

Bid Signature

By signing this bid, the bidder certifies compliance with all general instructions to bidders, terms, conditions, and specifications, and further certifies that this bid is made without collusion or fraud.

Bidder (Company Name)

Mailing Address

Authorized Signature

City, State, Zip Code

Printed Name

Phone Number

Title

Fax Number

E-Mail Address

Federal Tax ID #

STANDARD TERMS AND CONDITIONS

These standard terms and conditions apply to all UNO solicitations, unless otherwise specifically amended and provided for in the special terms and conditions, specifications, or other solicitation documents. In the event of a conflict between the General Instructions to Bidders or Standard Terms & Conditions and the Special Terms & Conditions, the Special Terms & Conditions shall govern.

Auditors

Bidders agree that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors and/or the University's auditors will have the option of auditing all accounts of the Bidder which relate to this agreement.

Award

Award will be made to that Bidder offering the highest commission percentage who meets all ITB requirements. The University reserves the right to award the items, separately, grouped, or on an all-or-none basis, and to reject any or all bids and to waive any informalities including technicalities in specifications that would preclude competition.

All solicitation specifications, terms, and conditions will be made part of any subsequent award as if fully reproduced and included therein, unless specifically amended in the formal contract.

Bidder Inquiries

If a bidder is in doubt as to the meaning of any part of a solicitation, bidder may submit a written request for interpretation to the Buyer of Record. Requests must be received in the Purchasing Office no later than seven (7) calendar days after the bid is advertised on May 20, 2022. Any interpretation of the documents will be made by Addendum only, issued by the Purchasing Office, and a copy of such Addendum will be sent to all known bidders. The University will not be responsible for any other explanation of the documents.

Contrary Terms and Conditions

Submittal of any terms and conditions contrary to those contained within this solicitation may cause your bid to be rejected. By signing this bid, vendor agrees that any terms and conditions which may be included in their bid are nullified.

Equal Employment Opportunity Compliance

By submitting and signing this bid, vendor agrees to abide by the

requirements of the following as applicable: Title VI and VII of the Civil rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Executive Order 11246, Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Act of 1975; the Americans with Disabilities Act of 1990. Vendor agrees not to discriminate, and to render services without regard to race, color, religion, sex, age, national origin, veteran status, political affiliation, handicap, disability, or other non-merit factor. Failure to comply shall be grounds for termination of any contract entered into as a result of this solicitation.

Equivalency

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Bids will be considered for any brand that meets or exceeds the quality of the specifications listed for any item. Bidder must state the brand/model he or she is bidding on each item. Bids not specifying brand and model number will be considered as offering the exact product specified in the solicitation.

It will be the sole responsibility of the Bidder to prove equivalency. Bidder will submit with the bid all illustrations, descriptive literature, and specifications necessary to determine equivalency. Failure to do so may eliminate the bid from consideration. The decision of the University as to equivalency will be final.

Governing Law

This purchase shall be construed in accordance with and governed by the laws of the State of Louisiana.

Louisiana Preference

A preference will be given to materials, supplies, and provision produced, manufactured, assembled, grown, or harvested in Louisiana, quality being equal to articles offered by competitors outside of the state. However, it will be the bidder's sole responsibility to indicate on his bid response which items were (or would be) produced, manufactured, assembled, grown, or harvested in Louisiana. Bidder must be able to provide satisfactory evidence to support preference claim if requested by the University. The enclosed Louisiana Preferences **must** be returned as a part of this bid.

Legislators Prohibited

According to LAS-R.S. 42:113(D)) the University is prohibited from entering into any contract or subcontract with a legislator or person who has been certified by the Secretary of State as elected to the Legislature or spouse of

a legislator, or any corporation, partnership, or other legal entity in which the Legislator or his/her spouse owns an interest, except publicly traded corporations. Each bidder **must** return the enclosed Disclosure Form as a part of his bid.

Warranty

The manufacturer's standard published warranty and provision will apply, unless more stringent warranties are otherwise required by UNO and specified in the solicitation. In such cases, the bidder and/or manufacturer will honor the specified warranty requirements, and bid prices will include any premium costs of such coverage.

DISCLOSURE FORM

EACH BIDDER IS TO DISCLOSE THE FOLLOWING INFORMATION BY ANSWERING YES OR NO TO THE FOLLOWING QUESTIONS:

1. Is the bidder a legislator or person who has been certified by the Secretary of State as elected to the Legislature? _____
2. Is the bidder a spouse of a legislator? _____
3. If the bidder is a corporation, partnership, or other legal entity, does a legislator or his spouse own any interest in that corporation, partnership or other legal entity? _____
4. If the bidder is a corporation, is it a publicly traded corporation? _____

SPECIAL TERMS AND CONDITIONS

1. Site Visit: In order to ascertain the true scope of the services requested, all bidders are urged and expected to inspect the site where services will be performed. Arrangements to do so may be made by contacting the buyer. Failure to inspect the site will **not** constitute grounds for a claim after contract award.
2. It shall be specifically agreed and understood that the Bidders may attend the Bid opening. They shall, whenever any award is considered, furnish specific samples for examination upon request by the University. It shall also be specifically agreed and understood that the decision of the University shall be final.
3. Escalation Clause (Only for services you know will increase. e.g. insurance)

Prior to any renewal term, the contractor may request a price increase for that renewal term based on documented increase costs. The University reserves the right to approve or disapprove the price increase.

SPECIFICATIONS

Background

The University of New Orleans (hereinafter referred to as the “University” or “UNO”) is an urban research University in the State of Louisiana, categorized as an SREB Four Year 2 Institution, as a Carnegie Doctoral/Research University – Intensive, and as a COC/SACS Level VI Institution. Established in 1958, UNO is a member of the University of Louisiana System offering degrees through five (5) undergraduate colleges and a graduate school.

UNO serves approximately 8,000 students by offering more than 100 degree programs. Enrollment comes from nearly every state in the U.S. and over 85 foreign countries.

The University is a “walking campus”, with most classes located within 10 minutes of each other. In the Fall of 2016 UNO had approximately 1500 students living on campus in our 2 residence halls and 2 apartment complexes, and a large number of off-campus students who live in close proximity to the campus.

Purpose

The University of New Orleans seeks to enter into an agreement with a single vendor to provide exclusive rights for the provision of vended snack products as described in this Invitation to Bid. Successful bidder will be responsible for furnishing all equipment, materials, supplies, and labor to provide for the supply and service of all machines.

Goals and Objectives

It is the goal of The University to provide first class products and services to its students, faculty, and staff. In furtherance of that goal, the successful bidder should accomplish the following objectives as a part of this agreement.

- Provision of contemporary and nutritious items that are customer focused
- Maintain optimum professional and food safety standards
- Competitive pricing affordable to students and employees
- A pleasing product presentation
- An increase in sales and commissions for the University

Definitions

Gross Revenues – Receipts of a business before deductions for any purpose except those items specifically exempted

May – The term “may” denotes an advisory or permissible action

Must – The term “must” denotes mandatory requirements

Shall – The term “shall” denotes mandatory requirements

Should – The term “should” denotes a desirable action

State – The State of Louisiana

University – The University of New Orleans

Will – The term “will” denotes mandatory requirements

Contract Term

The initial contract period shall be from July 1, 2022 through June 30, 2023. At the option of the University and acceptance by the contractor, this contract may be extended for four additional twelve (12) month periods at the same prices, terms, and conditions. Renewals will be from July 1st through June 30th of the remaining contract years. Contract shall not exceed sixty (60) months.

Scope of Work

The successful bidder will supply and manage the operation of snack vending machines at the University of New Orleans. Successful bidder will be given exclusive rights to vended snacks at UNO. Non-vended snacks are and will be sold at various campus locations.

Bidder Qualifications

All bidders must meet the following minimum qualifications, and present evidence of such as a part of this bid, to be considered for award.

Experience

Successful bidder will present evidence that its company has been engaged for a minimum of the past five (5) years in providing the services as listed in this ITB.

Debarment

By submitting a bid, Successful Bidder certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If a Bidder cannot certify this statement, a written explanation must be attached for review by the Purchasing Office.

Terminated Accounts

Each bidder must provide a list of all accounts terminated over the last three (3) years, and provide a reason for each termination. In addition, the bidder will provide a contact name, phone number, and e-mail address for each terminated account. The University reserves the right to request additional information regarding terminated accounts.

Licensing

Successful Bidder shall be licensed with the State of Louisiana, City of New Orleans, and any other required regulatory agency by the effective date of the awarded agreement. A copy of the license(s) and/or permit(s) shall be submitted to the Interim Director of Auxiliary Services for verification.

Performance Bond

The successful proposer shall be required to provide a performance (surety) bond in the total amount of One Hundred Fifty Thousand (\$150,000.00) dollars for the full lease period to insure the successful performance under the terms and conditions of the lease negotiated between the successful proposer and the University. Any performance bond furnished shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the

Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the state of Louisiana.

Equipment

Except as otherwise agreed by the Director of Auxiliary Services, all equipment shall be new at the beginning of the agreement, and shall, as a minimum, meet the following standards. The University reserves the right to approve all machines.

1. All machines provided will present a neat and cared for appearance, and all machine lighting will be maintained. Merchandise will be presented in an esthetically pleasing manner and prices will be clearly marked for each item offered.

2. All machines provided must accept dollars and make change, either through means of a built-in changer or an attached change machine.

3. All machines must have the ability to accept standard credit cards.

4. All machines must have a decal prominently affixed to each machine providing a unique machine identification number.

5. All machines must have a decal and/or QR scannable code prominently affixed to each machine providing instructions on reporting a malfunctioning machine and obtaining reimbursements.

6. All machines provided must meet the most recent ADA requirements.

7. All machines provided will be equipped with any and all necessary safety devices which shall be maintained in operating condition at all times.

8. All machines will be equipped with a non-resettable recording counter or meter to provide for recording all sales by each machine. The University

reserves the right to audit on a non-scheduled basis.

Equipment Repair

It will be the sole responsibility of the vendor to maintain all equipment in proper working order. Vendor will respond to a machine malfunction within twenty-four (24) hours of notification by the University. Any machine that cannot be repaired on the premises within seven (7) days of the report of its malfunction will be removed from the premises and a suitable replacement will be furnished, installed, and set back in operation.

Equipment Damage

The University assumes no responsibility for any losses the successful bidder may incur due to damage to equipment arising from any cause except an act or omission on the part of the University. The University assumes no responsibility for the protection of the successful bidder's property against loss arising from vandalism, theft, or other causes.

Equipment Location

The University has provided a list of current machine locations in Appendix A. At present the University wishes to maintain the current number and location of machines. The University reserves the right to increase or decrease the number and type of machines, and to add or subtract locations during the life of the agreement.

Merchandise

The successful vendor will provide a selection of products for the students, faculty, and staff, to include, but not be limited to, chips, candy, cookies, crackers, gum, mints, and pastries. Products offered will primarily consist of popular, national, well-accepted brands. In addition, the successful vendor will insure that a minimum a 50% of offerings in each machine are health conscious options. This percentage may be raised or lowered over the life of the contract upon mutual consent of the parties.

All items offered for sale must meet all applicable health and safety standards. All merchandise must be removed by its expiration date.

Pricing

Items will be priced within the following ranges:

Chips & Pretzels \$1.00 - \$1.35
Candy/Granola Bars \$1.00 - \$1.25
Cookies \$1.00 - \$1.35
Pastries/Danishes/Muffins \$1.00 - \$1.35
Nuts \$1.00 - \$1.25
Mints & Gum \$0.90 - \$1.00

The prices will remain during the initial agreement period. Prices may be changed by mutual agreement of the parties at the time of agreement renewal.

Commissions

Commissions will be paid by the Successful Bidder to the University based on a percentage of gross revenues less deductions for refunds. Gross revenues as used in this agreement will be defined as "receipts of a business before deductions for any purpose except those items specifically exempted". For the purpose of this agreement only deductions for refunds will be exempted when computing gross revenues.

Refunds

Refunds will be made by the Auxiliary Services Department of the University. The successful vendor will provide the University with a \$50.00 refund fund. The University will request replenishment of the fund as needed. A signed slip will be provided for each refund.

Payments

The Successful Bidder will pay to the University the commission percentage of each period's gross vending revenue on or before the thirtieth (30th) calendar day of the following months. The payment shall include a detailed statement of dollar sales by location and machine number. Causes of abnormal revenue deviations shall be noted by the Successful Bidder as part of these statements. All statements and payments shall be sent to the University Office of Auxiliary Services, with checks made payable to the University of New Orleans.

Sales Information

The University has provided the last three (3) years' worth of sales figures in Appendix C.

Utilities

The University will pay all utilities; however, please note that the current electrical accommodations are provided as is. If the successful bidder needs additional installation or modification, he/she will bear the full cost of same.

Housekeeping

The University will assist vendor in keeping the area surrounding the vending machines clean and attractive by performing normal housekeeping tasks. It will be the responsibility of the successful bidder to remove any and all debris (i.e., boxes, packaging, etc.) resulting from the servicing of the machines from University premises.

Insurance

Vendor compliance with the attached insurance requirements is mandatory, and evidence of such compliance must be submitted before work can commence.

Termination

Termination of the Agreement for Cause

The University may terminate the agreement for cause based upon the failure of the Vendor to comply with the terms and/or conditions of the agreement, or failure to fulfill its performance obligations pursuant to the agreement, provided that the University shall give the Vendor written notice specifying the Vendor's failure. If within thirty (30) days after receipt of such notice, the Vendor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the University may, at its option, place the Vendor in default and the agreement shall terminate on the date specified in such notice. The Vendor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the University to comply with the terms and conditions of the agreement, provided that the Vendor shall give the University written notice specifying the University's failure and a reasonable opportunity for the University to cure the defect.

Termination of the Agreement for Convenience

The University may terminate the agreement at any time by giving thirty (30) days written notice to the Vendor of such termination or negotiating with the Vendor an effective date. The Vendor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

Termination for Non-Appropriation of Funds

The continuance of the agreement is contingent upon the appropriation of funds to fulfill the requirements of the agreement by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the agreement, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the agreement, the agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

BID RESPONSE SHEET

The undersigned, in compliance with all terms, specifications, and special conditions of BRL2495 for the provision of vending services for snack machines at the University of New Orleans hereby proposes the following commission to the University of New Orleans for vending machine gross revenues.

NOTE: Bidder will supply only one commission rate for all product types described in the ITB in the blank provided for that purpose. If a vendor inserts more than one commission rate or is unable to provide all product types, their bid may be considered non-responsive and subject to rejection.

If bidder is awarded, the vendor would require _____ days in order to complete delivery and installation of new vending machine.

Commission offered for all product types: _____%

SIGNED BY _____

NAME & TITLE _____

FIRM NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE NUMBER _____

FAX NUMBER _____

EMAIL ADDRESS _____

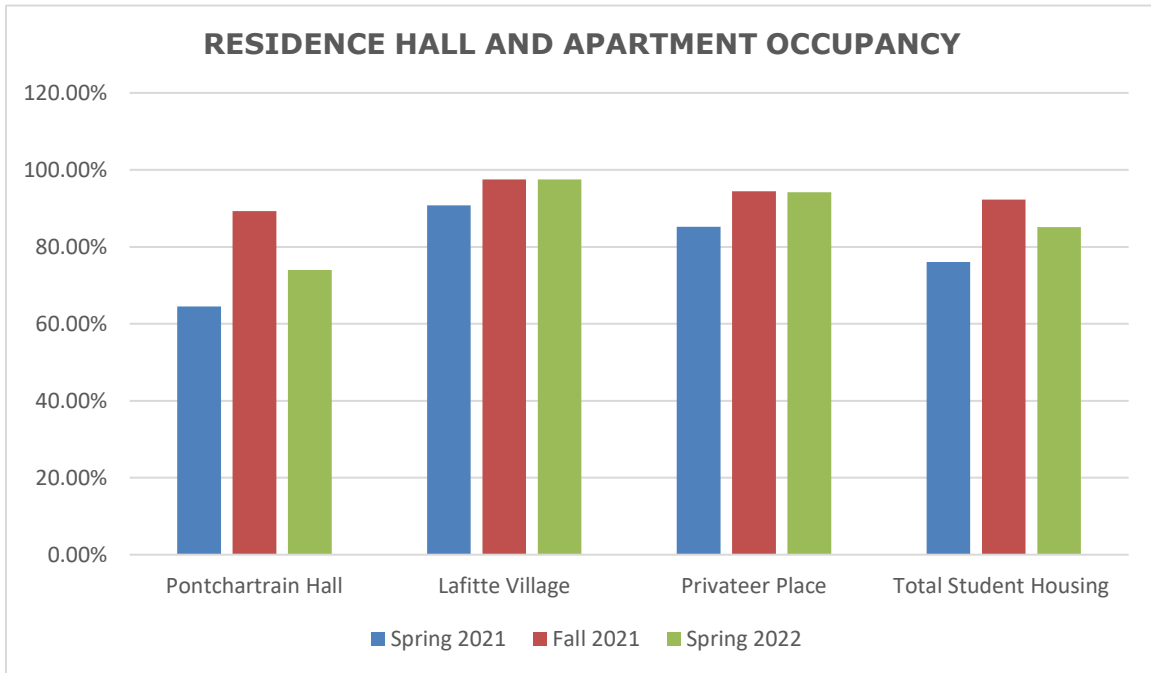
**APPENDIX A
SNACK VENDING MACHINE LOCATIONS**

<u>Building</u>	<u>Quantity</u>	<u>Floor</u>
Administration Bldg	1	2
Arena Aquatic Ctr	1	1
Biology Bldg	1	1
Computer Science Bldg	1	1
Education Bldg	1	1
Engineering Bldg	1	1
Geology & Psychology Bldg	1	1
Human Performance Ctr	2	1
Kirschmann Hall	2	1
Liberal Arts Bldg	1	1
Library	5	1
Math Bldg	1	1
Milneburg Hall	4	1
Performing Arts Ctr	1	1
Pontchartrain Hall North	1	1
Pontchartrain Hall South	1	1
Science Bldg	1	1
TRAC Bldg	1	1
University Ctr	1	1
Total	20	

**APPENDIX B
THREE YEAR ENROLLMENT SUMMARY**

<u>Semester</u>	<u>Undergrad</u>	<u>Graduate</u>	<u>Total</u>
Fall 2019	6713	1518	8231
Fall 2020	6895	1480	8375
Fall 2021	6508	1445	7953

APPENDIX C RESIDENCE HALL AND APARTMENT OCCUPANCY



APPENDIX D GROSS SALES FOR VENDED SNACKS

Fiscal Year 2018-2019	\$86,667.44
Fiscal Year 2019-2020	\$64,401.75
Fiscal Year 2020-2021	\$130,250.00

APPENDIX E INSURANCE REQUIREMENTS

The Successful Proposer shall purchase and maintain for the duration of the lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Proposer, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. **Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Proposer's headquarters. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included and the Employers Liability limit increased to a minimum of \$1,000,000. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

2. **Commercial General Liability**

Commercial General Liability insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

3. **Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Proposer shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the Proposer. ISO Form CG 20 10 (current form approved for use in Louisiana), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. The Proposer's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Proposer's insurance.
- c. Any failure of the Proposer to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.
- d. The Proposer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the policy limits.

2. Workers Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Proposer for the Agency.

3. All Coverages

- a. Coverage shall not be canceled, suspended, or voided by either party (the Proposer or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Proposer's policy.
- b. Neither the acceptance of the completed work nor the payment thereof shall release the Proposer from the obligations of the

insurance requirements or indemnification agreement.

- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Proposer to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with a A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.

If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Proposer shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance as required in the lease.

E. VERIFICATION OF COVERAGE

Successful Proposer shall furnish the Agency with Certificates of insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any lease renewal thereafter.

In addition to the Certificates, Proposer shall submit the declarations page and the cancellation provision endorsement for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.

Upon failure of the Proposer to furnish, deliver and maintain such insurance as above provided, this lease, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Proposer to purchase and/or maintain any required insurance shall not relieve the Proposer from any liability or indemnification under the lease.

F. SUBCONTRACTORS

Proposer shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS COMPENSATION INDEMNITY

In the event Successful Proposer is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Proposer, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Proposer, its owners, agents and employees. The parties further agree that Proposer is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Proposer hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this lease.

H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the lease.

Successful Proposer shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the University from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Successful Proposer, its agents, employees, partners or subcontractors in the performance of the lease, without limitation; provided, however, that the Successful Proposer shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the University.

Successful Proposer will indemnify, defend and hold the University

harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the University in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the University shall give the Proposer: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Proposer's sole expense, and (iii) assistance in the defense of any such action at the expense of Proposer. Where a dispute or claim arises relative to a real or anticipated infringement, the University may require Proposer, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the University shall require.

The Successful Proposer shall not be obligated to indemnify that portion of a claim or dispute based upon: i) University's unauthorized modification or alteration of a Product, Material, or Service; ii) University's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Proposer; iii) University's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Proposer believes that it may be enjoined, Proposer shall have the right, at its own expense and sole discretion as the University's exclusive remedy to take action in the following order of precedence: (i) to procure for the University the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non- infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the University up to the dollar amount of the Lease.

For all other claims against the Proposer where liability is not otherwise set forth in the lease as being "without limitation", and regardless of the basis on which the claim is made, Proposer's liability for direct damages, shall be the greater of the dollar amount of the Lease, or two (2) times the charges for products, materials, or services rendered by the Proposer under the Lease. Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the

other for special, indirect or consequential damages, including lost data or records (unless the Proposer is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The University may, in addition to other remedies available to them at law or equity and upon notice to the Proposer, retain such monies from amounts due Proposer, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.